

Probate/Mental Health Court: Rapidly Changing and Always Interesting
 Judge Jay Quam
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Probate/Mental Health Court is often seen as a relatively staid area of the court, with many thinking that change generally comes slowly and often related to some modest revision of the Uniform Probate Code. As I have found in the year that I have been presiding judge of Probate/Mental Health, however, this area of law encompasses a wide range of interesting, life-affecting cases, and it is an area that is undergoing significant change.

This article highlights the type of work the Probate/Mental Health Court does, the biggest changes that have occurred over the last year, the challenges we are facing, and some initiatives practitioners can expect to see in the upcoming year.

The Work of the Probate/Mental Health Court

As the title suggests, the Probate/Mental Health Court handles two entirely different areas.

Probate Court. On the probate side, we handle cases well beyond the determination of the validity of wills and the people entitled to receive something upon the death of another. A large percentage of our work involves determining whether or not a person is in need of a guardian or conservator; determining who the appropriate guardian or conservator will be; determining what powers should be appropriately granted to the person selected as guardian or conservator; determining whether there is proper accounting for the protected person's assets; and determining compensation for the conservator. These cases can span the lifetime of a ward/protected person.

The Probate Court also handles matters related to trusts. These cases can involve issues such as determining the appropriateness of a trustee and confirming the trustee's appointment; the appropriateness of a trustee's actions; the interpretation of a trust's provisions; or a determination of the person(s) entitled to receive money from a trust. For those trusts subject to the jurisdiction of the court, the court must also determine whether there is proper accounting for the assets of the trust. These cases can span generations.

One way we handle cases as efficiently and effectively as possible is through our probate registrars, Alonna Warns and Julie Peterson. They are recognized statewide as experts in the area and handle 1,100 to 1,350 informal estates each year. Thanks to their work, these hardly ever see the inside of a courtroom or have to be heard by a judicial officer.

Contrary to common misperception, these are not dry, unemotional matters, and they often tap into long-running family conflicts. The family feuds that underlie many probate cases make the courtroom proceedings especially challenging (and interesting).

Mental Health Court. Mental Health Court handles cases involving all sorts of people challenged with major mental illnesses, chemical dependency, developmental disabilities, or a combination of one or more. In Mental Health Court we see an amazing variety of people with conditions ranging from the heart-breaking (a young woman becoming psychotic and suicidal in response to sexual abuse by her father) to the almost humorous (what do you say when someone says "chariots of fire, judge!" or "my will of solicitation disrupted my neuropathological siege"?). It also involves a network of professionals dedicated to doing whatever they can to help people meet their challenges and live productive lives.

Within the Mental Health Court we also deal with what the public knows as sexual predators (called sexually dangerous persons or sexually psychopathic personalities in the statute). These high-stakes cases result in



Judge Quam has been the presiding judge of the Probate/Mental Health Court since January 2010. He was appointed to the Hennepin County District Court bench in July 2006.



indefinite civil confinement where it is shown that there is a history of harmful sexual conduct and a likelihood the person will commit other harmful sexual acts if released. Given the behavioral history and the possible consequences to the respondent and others, there is nothing easy about these cases.

Case-Staff Ratios

The workload for both Probate and Mental Health courts has historically been quite heavy. Those numbers have remained generally constant over the last couple years, even if the case types differ in response to economic conditions. As challenging as the caseload is under normal conditions, this past year had an added challenge. With the caseload remaining about the same, long-time referee Richard Wolfson began working half-time in March 2010. Due to budget constraints, we have been unable to fill the half-time vacancy left by Referee Wolfson.

Budget constraints have also reduced the administrative personnel necessary to keep the cases (and the paper) moving. The division, like many others in the court, has been holding open vacancies that occur for extended periods of time. As a result, the division has been operating short-staffed for most of the past two years. Currently, the Probate/Mental Health Court has one administrative position unfilled, with more vacancies on the horizon as a result of possible future budget cuts.

Status of Judicial Officers

Turnover of judicial officers in the Probate Court has historically been very slow, with Referees Bruce Kruger and Richard Wolfson handling the vast majority of probate matters over the past two decades. The past year, however, has seen relatively dramatic personnel changes. As noted earlier, Referee Wolfson went to a half-time schedule in March 2009. To help offset that loss of judicial officer time, about 40 to 50 percent of my time is now spent handling probate matters.

To make things even more dynamic, Referee Kruger retired from the probate bench in August 2010. To allow more flexibility in scheduling, we decided to hire two part-time referees. After interviewing a number of outstanding candidates, we hired two referees, Dean Maus and George Borer, both of whom have proven able at filling in the gaps created by Referee Kruger's retirement (See bottom of page for more information on Maus and Borer).

Fortunately, there has not been a similar turnover in the judicial officers staffing mental health cases. Longtime referees, Pat Meade and Tony Schumacher, remain on the bench, hearing a wide range of cases involving requests to commit people for mental illness/chemical dependency/developmental disability, requests to allow the administration of neuroleptic medication or electro-convulsive therapy, and requests to release people from commitment.

The significant change in hearing mental health cases is the strain on the judicial officers from the fewer resources that are available. Not only has the reallocation of half of my time to Probate Court caused a reduction in the judicial officer time available to hear the cases, but the overall number of mental health proceedings has gone up slightly.

Challenges for 2011

We face some serious challenges this year, most related to the prospect that we will not be adequately funded. They include the following:

Budget Challenges. In the face of an historic budget deficit, it is increasingly apparent that adequate court funding is at risk. Though we are hopeful that the Legislature will recognize the need to adequately fund the courts, we are very sensitive to the fact that inadequate funding will have a very negative effect on the people that need access to the Probate/Mental Health Court. Because mental health proceedings involve forced confinement and statutorily mandated time-frames, it is likely that the probate proceedings will bear the brunt of the impact of budget cuts. Time will tell. Delay for Guardianship/Conservatorship Hearings. The time for an initial hearing on a petition for a guardianship or conservatorship has slipped to an unacceptable 11 to 12 weeks. Thanks to the willingness of our Court Visitors and Chief Judge James Swenson, we are on our way to reducing the gap between filing and initial hearing to a goal of five weeks. We are committed to doing

everything we can to attain and maintain that five-week time period, though the upcoming budget challenges may force us to reconfigure our priorities.

Initiatives for 2011

We are working on a number of initiatives that we hope will make the Probate/Mental Health Court more efficient and effective in handling cases. Some of these include the following:

- **CAMPERS.** One of the most time-consuming administrative tasks in the Probate Court is collecting and auditing conservator accounts. To make the system more efficient and effective, the state (under the leadership of Referee Maus) is rolling out CAMPERS (the Conservator Account Monitoring Preparation and Electronic Reporting System), an electronic filing system for conservator reports. Under CAMPERS, conservators will have an easier time filling out and filing reports, and the courts will have an easier time analyzing those reports. CAMPERS is being looked at as the model for states across the country considering electronic filing of conservator reports.
- **Educational DVD for Guardians.** The role of guardian is an extremely important role that is often filled with well-intentioned but inexperienced individuals. One difficulty guardians face is that there is no readily available resource for helping them understand their obligations to the protected person and the courts, the rights the protected person has, common challenges that guardians face, and resources available for helping address problems. We hope to help guardians by putting together an educational video that gives them the information they need. That video would be shown to the proposed guardians before coming into court and available to them afterwards.
- **Possible Use of Volunteer Attorneys to Act as Subordinate Judicial Officers.** One way to help alleviate the strain on our resources is through the use of subordinate judicial officers. Through cooperation with the bar, we are exploring a pilot program where experienced practitioners would volunteer their time and expertise to act as referees (called “subordinate judicial officers”) to handle uncontested cases. Those efforts would free up time for the regular judicial officers to handle what they do best: resolve contested cases.
- **Expanded Use of Interactive Television (ITV).** Many people subject to commitment are placed in facilities throughout the state. There are enormous costs to the county—and substantial distress to the people involved—in transporting them back to Hennepin County for follow-up hearings. Many of those hearings end up being uncontested, resulting in unnecessary costs to the county and unnecessary distress to the individuals. We are working to reduce these unnecessary consequences by coordinating systems across the state to allow for more hearings to be conducted through ITV. In many cases, ITV allows the individual to remain comfortably in the care of the health care provider while still having meaningful participation in the court proceedings. However, these efforts have been hampered by the varying levels of both access to ITV and compatibility with those systems that are available.
- **Paperless Proceedings.** The Probate/Mental Health Division was the first area of our court to begin using document imaging back in 2001. In 2007, the first completely paperless process was developed in the division dealing with informal estates. Along with other areas of the courts, we are moving toward converting all of our records to electronic records and to electronic filing (e-filing) of documents. Once completed, those efforts will allow more efficient use of staff time and easier access to court records.

Conclusion

Contrary to common belief, the Probate/Mental Health Court is a dynamic and interesting area of the court. With its mix of interesting and life-affecting cases, together with the challenges the courts face, it promises to remain dynamic and interesting for years to come. Thanks to a hardworking crew of judicial officers and administrative personnel, you can be confident that the Probate/Mental Health Court will continue to be responsive to the needs of the people of Hennepin County and the state of Minnesota in the years to come.

New Part-Time Referees

Dean Maus received his B.S. from Moorhead State University and is a graduate of William Mitchell College of Law. Maus worked in private practice for over 10 years before becoming the Ramsey County Probate Court manager and a probate court referee in 1995. Maus has been a key court person in charge of implementing the state's new electronic reporting system for conservators called CAMPERS (Conservator Account Monitoring Preparation and Electronic Reporting System). Maus is a frequent lecturer on a variety of probate matters.

George Borer received his B.A. from the University of Minnesota and is also a graduate of William Mitchell College of Law. Borer had more than 30 years of experience in private practice representing clients in probate, guardianship/conservatorship, elder law, trust, and estate-planning matters before becoming a referee. Borer has extensive trial experience in both civil and criminal matters from his work as a city attorney with a firm practicing municipal law, and also as a special assistant county attorney. He is certified by the MSBA as a real property law specialist, and has been lead counsel in numerous eminent domain and other real property actions. He is also a frequent lecturer to various groups on guardianship and conservatorship proceedings, and has served on the boards of several local nonprofit corporations.